

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA
AT BECKLEY**

**DANE RHEINSCHMIDT and
DINAH RHEINSCHMIDT,**

Plaintiffs,

Civil Action No.: 5:21-cv-00096

v.

**(Removed from the Circuit Court of
Summers County, West Virginia,
Case No.: CC-45-2020-C-26)**

**MICHAEL DAVIS FERRIS and
TRIMAC TRANSPORTATION INC.,**

Defendants.

NOTICE OF REMOVAL

NOW COME the Defendants, Trimac Transportation Inc. and Michael D. Ferris, by and through their counsel, Melvin F. O'Brien, Esq., and Dickie, McCamey & Chilcote, L.C., and remove the above-captioned lawsuit pursuant to 28 U.S.C. §§1441 *et seq.*, from the Circuit Court of Summers County, West Virginia, where it has been assigned Case No. CC-45-2020-C-26, to the United States District Court for the Southern District of West Virginia, at Beckley, and in support thereof avers as follows:

1. The Defendant Trimac Transportation, Inc. (hereinafter "Defendant Trimac") was served with Plaintiffs' Complaint via the Secretary of State on September 14, 2020. Pursuant to 28 U.S.C. 1446(a), a copy of the Summons and Complaint served upon Defendant Trimac is attached hereto as Exhibit 1.

2. The Defendant Michael Davis Ferris (hereinafter "Defendant Ferris") was served with Plaintiffs' Complaint via personal service on October 20, 2020. Pursuant to 28 U.S.C. 1446(a), a copy of the Summons and Complaint served upon Defendant Ferris is attached hereto

as Exhibit 2.

3. Venue in this Court is proper pursuant to 28 U.S.C. § 1391(b)(2), as the events giving rise to the Plaintiff's claim occurred in Summers County, West Virginia, which is situated in the Southern District of West Virginia, Beckley Division. In addition, Summers County, West Virginia, where this action was initially filed, is within the jurisdiction of the United States District Court for the Southern District of West Virginia.

4. The case stated by the initial pleading was not removable. The case first became removable after receipt by the Defendants of the Plaintiff's discovery responses, from which it was first ascertained that the case is one which has become removable. *See* 28 U.S.C. 1446(b)(3). Defendants received Plaintiff's discovery responses on January 12, 2021.

5. The time within which Defendants are required to file this Notice of Removal of this action has not expired at the time of its filing and service.

6. Pursuant to 28 U.S.C. § 1446(a), a true and correct copy of the Docket Sheet maintained by the Circuit Court of Summers County is attached hereto as Exhibit 3.

7. As grounds for said removal, the Defendants state that this civil action is one which may be removed to the United States District Court pursuant to the provisions of 28 U.S.C. §1441(b), in that neither Defendant is a citizen of the State of West Virginia, where the action was brought.

8. Plaintiffs are citizens and residents of Muscle Shoals, Alabama. *See* Exhibit 1, Complaint, para. 1.

9. Defendant Trimac is, and was at all times relevant hereto, a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 15333 JFK Boulevard, Suite 800, Houston, Texas.

10. Defendant Ferris is an individual residing in Green River, Wyoming.

11. There is complete diversity of citizenship among the parties to this matter, for purposes of this Court's exercise of jurisdiction pursuant to 28 U.S.C. §1332.

12. The United States District Court for the Southern District of West Virginia has jurisdiction over the above-captioned action under the provisions of 28 U.S.C. §1332, in that this civil action is between citizens of different states and the matter in controversy exceeds the sum of Seventy-Five Thousand Dollars (\$75,000.00), exclusive of interest and costs.

13. Specifically, Plaintiffs seek both special and general compensatory damages associated with personal injuries sustained by Plaintiff Dane Rheinschmidt arising out of a collision involving two tractor trailers. Plaintiff Dinah Rheinschmidt also seeks damages for loss of consortium arising from the injuries sustained by her husband in the subject collision. *See* Exhibit 1.

14. In their recent discovery responses, Plaintiffs denied that the amount in controversy in this case is equal to or less than the sum of \$75,000. *See* Exhibit 4, p. 1. Such an admission properly serves as evidence of the amount in controversy. *See Raw Bar LLC v. ADT LLC*, 2019 U.S. Dist. LEXIS 130197 (S.D. W.Va. 2019).

15. Also in their recent discovery responses, Plaintiffs described the injuries allegedly sustained by Mr. Rheinschmidt, which include injuries and pain in his knees, shoulder, and back; trauma-related shingles in the left shoulder; back surgery consisting of a laminectomy with posterior lateral fusion and stabilization; and a concussion with associated symptoms of balance problems, ear-ringing, headaches, and cognitive difficulties. *See* Exhibit 4, pp. 4-5. Mr. Rheinschmidt's claimed medical expenses to date total \$97,628.92. *See* Exhibit 4, p. 6. He also seeks compensatory damages for lost wages of approximately \$60,000, pain and suffering, loss of

enjoyment of life, scarring, embarrassment and humiliation, and mental anguish. *See* Exhibit 4, p. 6; Exhibit 5, Wage Loss Documents.

16. Mrs. Rheinschmidt's loss of consortium claim in part is based on the fact that Mr. Rheinschmidt was unable to provide the assistance and care she required due to her specific medical condition which pre-dated the accident. *See* Exhibit 4, p. 7.

17. In light of the nature and extent of Mr. Rheinschmidt's injuries, the potential recoverable damages, the Plaintiffs' responses to requests for admission, and the information supplied with Plaintiffs' discovery responses, it is clear that the amount in controversy exceeds \$75,000 in this case.

18. Concurrent with the filing of this Notice of Removal, Defendants have filed with the Clerk of the Circuit Court of Summers County, West Virginia, and has served upon Plaintiffs' counsel, a Notice of Filing of Notice of Removal advising that said Defendants have removed this action to the United States District Court for the Southern District of West Virginia, Beckley Division. A copy of the State Circuit Court Notice of Removal is attached hereto as Exhibit 6.

19. In accordance with 28 U.S.C. §1446(b)(2)(A), all Defendants join in the removal of this case.

20. By filing this Notice of Removal, this Defendant does not waive any defense which may be available to it in this action.

WHEREFORE, the Defendants, Trimac Transportation Inc. and Michael D. Ferris, respectfully request that this case be removed from the Circuit Court of Summers County, West Virginia, to the United States District Court for the Southern District of West Virginia, and this Honorable Court assume subject matter jurisdiction over this action on the diversity jurisdiction

grounds set forth in this Notice of Removal.

Respectfully submitted,

DICKIE, McCAMEY & CHILCOTE, L.C.

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Counsel for Defendants

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CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of February, 2021, I electronically filed the foregoing *Notice of Removal* with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following CM/ECF participants:

Daniel Cooper, Esq.
Jamison Cooper, Esq.
Cooper Law Offices, PLLC
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Bridgeport, WV 26330
Counsel for Plaintiff

DICKIE, McCAMEY & CHILCOTE, L.C.

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